WAIFS IN PROSE, &c.

The Hon.ble Sir John S. D. Thompson with the Compliments & respects of the Author.
Ottawa, 9 Sept.r 1890.

Having been at my own request, placed on the superannuation list at the beginning of 1888, when my age was rather over eighty-seven, but being still kindly allowed to use the seat I had occupied for more than twenty years in the room assigned for my office as Law Clerk of the House of Commons when the plan of the Parliament Building was made, I could not help still taking a deep interest in public, and especially in Parliamentary affairs; nor could I abstain from now and then writing quiet little articles (never touching party politics) which Editors were kind enough to like and print; and some of which I have had the vanity to collect and get printed together in the following pages, for my own use, or that of any of my friends who might like to have them as a memento of their old acquaintance, W. And a few of these relate to important decisions nnd considerations touching public matters.

G. W. WICKSTEED.

Ottawa, 11 July, 1890.

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THE RAILWAY CASE.

MANITOBA VS. C. P. R.

Editor of THE CITIZEN:

SIR,—The great case has been heard, and the grand tournament of the Knights of the Bar and Railway has been held. On the 14th proximo we are to hear the result, and the Chief Justice, as the Queen of Beauty presiding at the contest, will award the laurel wreath to the victors. The Knights of the Bar and their Esquires did not break the record of their prowess. Mr. Blake, clad in the panoply of the strict letter of the law, stoutly maintained that under two clauses of our Canadian Constitution, a Provincial railway declared by our Parliament to be a work "for the general advantage of Canada," is withdrawn absolutely from Provincial legislative authority and control, and placed exclusively under that of the Dominion Parliament, and that the railway in question had been so declared. And Mr. Mowat, opposing to the letter of the law which killeth, the spirit which giveth life, contended resolutely that the said clauses and declaration merely gave the Dominion Parliament power to make the railway, if it chose, though entirely within a Province, or to assume the control of it if made, and not that of saying, *à la* dog in the manger, "We won't make it and you shan't;" and to argue that the Imperial Parliament intended that a Province would lose its right to make a railway because it would be for the general advantage of Canada, was giving a very severe twist, not to the British Lion's tail, but to his parliamentary clause.

W.

November 27th, 1888.

Referring to the case now before the Supreme Court *in re* the Province of Manitoba and the Canadian Pacific Railway Company, we gather from the reports in the papers, that Mr. Blake contended, that the Manitoba railway in question came within the description of those which had been declared by the Dominion Parliament to be "for the general advantage of Canada," and was, therefore, by the provision of the Constitutional Act in such case, withdrawn from the legislative authority of the Provincial Legislature, and exclusively placed under that of the Dominion Parliament, and was therefore, unlawfully made under the Manitoba Act, contrary to the said provision of the Constitutional Act, and was not entitled, under the Railway Act of 1888, to the benefit of the provisions therein made respecting railway crossings. Mr. Mowat on behalf of the Province, maintaining that the provision of the Constitutional Act did not prohibit the making of a railway declared to be "for the general advantage of Canada," but made it subject thereafter to the legislative authority of the Dominion Parliament, and placed it, when made, and until the said Parliament should otherwise direct, under the laws governing railways under its authority; that the Dominion Parliament had made no special provision as to the said railway, which was, therefore entitled to the benefit of the provisions of the Railway Act of 1888, including those respecting railway companies and others, which by section 4 are declared to be applicable "to all railways, whether otherwise under the authority of Parliament or not;" and that this construction of the Imperial Act seemed more consistent with common sense, and with the allowance by the Dominion Government, acting of course under the opinion of the Attorney-General, of the Provincial Railway Acts cited by him (Mr. Mowat) and more consistent with the intention of the Dominion Parliament, than the view which supposes it to have been intended to prevent the construction by a Province of a

work entirely within its boundaries, because it was declared to be "for the general advantage of Canada."

The Imperial provision has been frequently extended to Provincial railways, but always for the purpose, not of prohibiting them, but of extending them, so that they should be for the greater advantage of Canada. It is difficult to believe that a Parliament which, in the then last session, had repealed the enactments establishing railway monopoly in Manitoba under one form, intended to re-establish it in another, which Mr. Blake's construction of the Imperial enactment would certainly do.

W.

"Canada Law Journal," 1st December, 1888.

In a very strong editorial of THE WEEK for 29th November, the Government and Parliament were severely handled with respect to this matter, under the supposition that Mr. Blake's interpretation of the Imperial provision was the correct one; and W., believing that the Editor was mistaken in this view, wrote, and THE WEEK published in its then next number, the following letter:—

Editor of THE WEEK:

SIR,—Referring to the article in your number of November 29th, respecting the case now pending in the Supreme Court between the Canadian Pacific Railway Company and the Province of Manitoba, I think you should acquit the Dominion Government and Parliament of any intention to re-establish, under the provision in the Railway Act, the monopoly they had abolished in the preceding session. It is only reasonable to believe, that the Government and Parliament held that the provision of the Constitutional Act, respecting the effect of a

declaration that any Provincial work was one "for the general advantage of Canada," was not intended to prevent a Province from constructing a railway wholly within such Province, but to enable the Dominion Parliament to make such railway, or to subject it, when made by a Province, to such provisions as might be established for the government of railways generally, as the Railway Act does; and under this interpretation of the Imperial clause the Government, acting of course under the opinion of their Attorney-General, must have acted in allowing the Provincial Acts cited by Mr. Mowat in his address to the Court. The Dominion Parliament never claimed the power of preventing the construction by a Province of a railway within its limits: and when the Government desired to prevent the construction of certain railways, as *not* consistent with the general advantage of Canada, the Act passed for the purpose only declared that such construction would not be sanctioned; and this declaration was acted upon by the exercise of the power of disallowance.

The Railway Act does not forbid such construction or require such disallowance, and therefore does not re-establish the monopoly you so justly denounce as inconsistent with good faith and equity. Abiding by their consistent interpretation of the Imperial provision, the Government was not bound to call the attention of members to the possibility of a pretention on the part of the C. P. R. Company, invalid in law, and which seems only to have been raised for the sake of profitable delay. How far the managers of the Company are justified in not having called attention to the point when the Railway Act was under discussion, is for them to show. The Company, and not the Government, is contesting the right of the Province to make a railway declared to be for the general advantage of Canada.

W.

Ottawa, 4th December, 1888.

And on Saturday, the 22nd of December, the Supreme Court unanimously declared its opinion, that the Manitoba Act is valid and the railway constructed under it entitled to cross the C. P. R., subject to the approval of the Railway Committee, as provided by the Railway Act.

NOTE.—The two letters appeared in the issues of the papers mentioned, next after their respective dates, and the article from the Law Journal, in its No. for 1st December, and they have therefore been largely circulated separately. The writer hopes that he may be pardoned for reprinting them together for the perusal of some of his friends, now that the Supreme Court has sanctioned the opinion they express, as to the true intent and effect of a provision of the Constitutional Act affecting the statutory powers of all the Provinces and of the Dominion, respectively. W.

JESUITS' ESTATES ACT.

With reference to the articles in the LAW JOURNAL of the 15th February, 1889, the purport of which seems to be that the Jesuits' Estates Act, passed by the Legislature of the Province of Quebec, ought to have been disallowed, permit me modestly to express my opinion that the Dominion Ministry could not properly have advised its disallowance;—not because it was within the constitutional powers of the Quebec Legislature, for, if that alone were a sufficient reason, the *Veto* power would be useless, as an Act *ultra vires* would be *ipso facto*, null and void, although not disallowed;—but because, being perfectly within the powers of the Legislature, it was passed without opposition or remonstrance by any party, and is a fair and amicable settlement of a long standing difficulty and the expression of the

will of the people of the Province. It does not violate the principle of the separation of Church and State more than the Clergy Reserves Act: both authorize the sale of property given for church purposes and education, and divide a certain proportion of the proceeds of the sale among the parties who appear justly entitled thereto, once for all, and so avoid any further interference of the Government, which can neither add to nor diminish the share assigned to each, and such share, in the case before us, will be moderate enough, for it seems likely that the principal sum, $400,000, will be divided among several educational institutions, and the interest of each share, at four per cent., will be a very modest contribution towards the support of an institution for superior education. The main objection made to the grant is that it is made to the Jesuits; but the Act does not give them the whole or any definite part of it, but allows the Pope to divide it among institutions, who must use it within the Province, for the purposes mentioned within the preamble; and from the latest reports it seems probable that the Jesuits' share will not be exorbitant. The articles in question treat the work done by the Order rather slightingly, but in Canada at least, their work compares favorably with that done by any other missionary body, and the martyr spirit in which it has been done is denied by none. They have shown themselves good teachers, and have several educational institutions against wich I have heard of no complaint. St. Mary's College at Montreal, was incorporated by Act of Parliament of United Canada (Upper and Lower) in 1852, the corporators being the Roman Catholic Bishop of Montreal and six members of the Order;—it has I believe been very successful. Has any complaint been made against it during the 37 years it has existed? In 1887 the Jesuits were incorporated by the Quebec Act 50 Vic., c. 28, which was not disallowed, nor was its allowance made a matter of reproach to the Dominion Ministry.—It has been made

a subject of reproach to the Jesuits and to the Pope, that he suppressed them in 1763 and restored them in 1814; but may not the Pope have been right in both cases, may not the Jesuits have shown him that they had seen the error of the practices by which they had offended, and reformed them? A hundred years have made great changes in men's ideas of morality and right. The Roman Catholic clergy do not now complain of the Jesuits, though they did in 1763. They have the virtues of obedience, self-denial, industry and temperance. They opposed the sale of intoxicating liquor to the Indians when the French Governor for profits' sake allowed it. They are accused of holding doctrines contrary to morality; but they deny the charge, and challenge proof. Their constitution and rules were printed in Latin and French at Paris in 1845, and there is a copy in our Parliamentary Library—why is it not cited to justify the accusation? They preach regularly in the church attached to St. Mary's College at Montreal;—is their preaching complained of? I am a Protestant and wish earnestly that all Jesuits and Roman Catholics were of my persuasion; but I do not think Protestants alone are Christians. The vast majority of our fellow subjects in Quebec are Roman Catholics, and acknowledge the Pope as the Head of their Church, and I do not think a more faithful, devoted, or well beloved and respected body of men can be found anywhere than the Roman Catholic clergy of Lower Canada. Tennyson has written,—

> "Love your ennemies, bless your haters," said the Greatest of the Great;
> "Christian love among the Churches seems the twin of heathen hate."

Ought not the members of every Christian church, while obeying the commandment cited in the Laureate's first line, to do their best to prove the bitter taunt in the second to be undeserved?

And as respects the article questioning the constitutionality

of the said Act,—it does not seem to me that the English Acts cited in it can apply to Canada, which when they were passed was no part of the realm of England, and the inhabitants of which are by subsequent Acts of the Imperial Parliament guaranteed the free exercise of the Roman Catholic religion, of which the Pope is the head, and his supremacy as such part of its very essence. The later law derogates from and virtually repeals any former provision contrary to it. The English laws disqualifying Roman Catholics from holding certain offices were never in force in Canada. The money appropriated belonged to the Province, and is granted by its Legislature for the purposes for which the property from which its arises was given by the French King, and the Act of appropriation is sanctioned by the assent of the Queen, who may, without impropriety, avail herself, in dealing with it, of the advice and assistance of the Head of the Church and of an ecclesiastical and educational corporation, which, if not legally the same, is morally the representative and successor of that to which the original grant was made, and which, with the Pope, will be bound to use the money in accordance with and solely by virtue of the powers given them by the Act. I cannot see that any law is violated or anything but right done by this provision.

W.

NOTE.—The above article was written for the LAW JOURNAL, but the March number was ready earlier than I expected and I was too late, and did not like to wait for the next number.

W.

Ottawa Citizen, 9th March 1889.

LES EXCOMMUNIÉS.

—

THE EXCOMMUNICATED.

An Episode in the History of Canada.

AND

LE DRAPEAU ANGLAIS.

—

THE BRITISH FLAG.

LES EXCOMMUNIÉS.

Voyez-vous, sur le bord de ce chemin bourbeux,
Cet enclos en ruine où broutent les grands bœufs ?
Ici, cinq paysans—trois hommes et deux femmes—
Eurent la sépulture ignoble des infâmes !

Cette histoire est bien triste, et date de bien loin.

Comme un soldat mourant la carabine au poing,
Québec était tombé. Sans honte et sans mystère,
Un bourbon nous avait livrés à l'Angleterre !

Ce fut un coup mortel, un long déchirement,
Quand ce peuple entendit avec effarement,
—Lui qui tenait enfin la victoire suprême,—
Par un nouveau forfait souillant son diadème,
Le roi de France dire aux Saxons : Prenez-les !
Ma gloire n'en a plus besoin ; qu'ils soient Anglais !

O Lorraine ! ô Strasbourg ! si belles et si grandes,
Vous, c'est le sort au moins qui vous fit allemandes !

Des bords du Saint-Laurent, scène de tant d'exploits,
On entendit alors soixante mille voix
Jeter au ciel ce cris d'amour et de souffrance :
—Eh bien, soit ! nous serons français malgré la France !

Or chacun a tenu sa parole. Aujourd'hui,
Sur ce lâche abandon plus de cent ans ont lui :
Et, sous le sceptre anglais, cette fière phalange
Conserve encore aux yeux de tous. et sans mélange,
Son culte pour la France, et son cachet sacré,

THE EXCOMMUNICATED.

In yon rough plot beside the muddy road,
Where on wild herbage heavy cattle browse,
Five peasants lie—two women and three men—
Whose burial rites were such as felons have.

The tale is sad and dates from long ago.

Like soldier dying with his arms in hand,
Quebec had fallen. Without disguise or shame,
A Bourbon sold us to our English foes!

Mortal the blow and long the agony
Felt when our people heard with wild dismay,—
—They who had gained the last great victory,—
The King of France—(soiling with new disgrace
His diadem)—say to the Saxon,—Take them!
My glory needs them not; let them be English!

O Strasbourg! O Lorraine, so fair, so great,
'Twas fate at least that made you German land!

Along St. Lawrence, scene of gallant deeds,
The voice of sixty thousand souls was heard
Raising to Heaven their cry of love and grief;
—So be it! We'll be French despite of France!

And each has kept his word. And now to day,
A century since this base abandonment,
And under English rule, this faithful band,
Still cherish openly and unalloyed,
Their sacred love for France, and her impress,

Mais d'autres repoussant tout servage exécré,
Après avoir brûlé leur dernière cartouche,
Renfermés désormais dans un orgueuil farouche,
Révoltés impuissants, sans crainte et sans remord,
Voulurent, libres même en face de la mort,
Emporter au tombeau leur éternelle haine...

En vain l'on invoqua l'autorité romaine ;
En vain, sous les regards de ces naïfs croyants,
Le prêtre déroula les tableaux effrayants
Des châtiments que Dieu garde pour les superbes ;
En vain l'on épuisa les menaces acerbes ;
Menaces et sermons restèrent sans succès !
—Non! disaient ces vaincus; nous sommes des Français ;
Et nul n'a le pouvoir de nous vendre à l'enchère !

La foudre un jour sur eux descendit de la chaire :
L'Eglise pour forcer ses enfants au devoir,
A regret avait dû frapper sans s'émouvoir.

Il n'en resta que cinq :

Ceux-là furent semblables,

Dans leur folie altière, aux rocs inébranlables :
Ils laissèrent gronder la foudre sur leurs fronts,
Et malgré les frayeurs, et malgré les affronts,
Sublimes égarés, dans leur sainte ignorance,
Ne voulurent servir d'autre Dieu que la France !

La vieillesse arriva ; la mort vint à son tour.
Et, sans prêtre. sans croix, dans un champ, au détour
D'une route fangeuse où la brute se vautre,
Chaque rebelle alla dormir l'un aprés l'autre.

But some who spurned all hateful servitude.—
When their last cartridge had been spent in vain.
Nursing their wrath in gloomy, savage pride,
Impotent rebels, without fear or shame,—
Determined, free and in the face of death,
To carry to the grave their deathless hate.

And vainly was the power of Rome invoked;
And vainly in her simple followers' ears,
The priest read out the fearful catalogue
Of pains reserved by God for stubborn souls;
In vain exhausted all its awful threats;
Nor threatenings nor sermons aught availed!
No! said the vanquished! we are Frenchmen still,
No man has power to set us up for sale!

At length the thunder from the pulpit came:
The Church to force her children to obey,
Struck with regret, but calmly resolute.

Five only braved the blow;—but these resembled
In their proud folly, the unshaken rock;
They let the thunder growl above their heads,
And in despite of insult and of fears,
Sublimely mad, in holy ignorance,
Refused to bow to any God but France!
Old age crept on them,—death came in its turn,—
And without priest, or cross, in that rough plot,
Close by the muddy road, where cattle browse
These stubborn souls lay down in turn to sleep.

Il n'en restait plus qu'un, un vieillard tout cassé,
Une ombre! Plus d'un quart de siècle avait passé
Depuis que sur son front pesait l'âpre anathème.
Penché sur son bâton branlant, la lèvre blême,
Sur la route déserte on le voyait souvent,
A la brûne, roder dans la pluie et le vent,
Comme un spectre. Parfois détournant les paupières
Pour ne pas voir l'enfant qui lui jetait des pierres,

Il s'enfonçait tout seul dans les ombres du soir,
Et plus d'un affirmait avoir cru l'entrevoir—
—Les femmes du canton s'en signaient interdites—
Agenouillé la nuit sur les tombes maudites.

Un jour on l'y trouva roide et gelé,

Sa main
Avait laissé tomber sur le bord du chemin
Un vieux fusil rouillé, son arme de naguère,
Son ami des grand jours, son compagnon de guerre,
Son dernier camarade et son suprême espoir.

On creusa de nouveau dans le sol dur et noir;
Et l'on mit côte à côte en la fausse nouvelle,
Le vieux mousquet français avec le vieux rebelle!

Le peuple a conservé ce sombre souvenir.
Et lorsque du couchant l'or commence à brunir,—
Au village de Saint Michel de Bellechasse,
Le passant, attardé par la pêche ou la chasse,
Craignant de voir surgir quelque fantôme blanc.
Du fatal carrefour se détourne en tremblant.

Donc, ces cinq paysans n'eurent pour sépulture
Qu'un tertre où l'animal vient chercher sa pâture!

One yet remained, a broken-down old man,
A shadow; five and twenty years had passed
Since on his head the anathema had fallen.
Bowed on his trembling staff, with whited lip,
On the deserted road he oft was seen
At twilight, wandering in the rain and storm,
Spectre-like,—turning oft his eyes away,
To shun the child that pelted him with stones,

He plunged alone into the shades of night.
And more than one affirmed to having seen him,
—The village women crossed themselves in fright—
Kneeling in darkness by the unblessed graves.

One day they found him frozen stiff; his hand
Had in its weakness on the road let fall
An ancient rusted gun,—his old-time weapon,
His friend in the brave days,—his war companion,
His latest comrade and his supreme hope.

They dug into the black and hardened soil,
And laid in that new grave, and side by side,
The old French musket and the old-time rebel.

The people cherish yet this sad remembrance;
And when the sunset gold fades into grey,
The passer through St. Michel de Bellechasse,
Belated at his sport with rod or gun,
Fearing to see some sheeted spectre rise,
Turns trembling from the fatal spot away.

So these five peasants had for burial place,
Five little mounds where cattle seek their food!

Ils le méritaient,—soit ! Mais on dira partout
Qu'ils furent bel et bien cinq héros après tout !

Je respecte l'arrêt qui les frappa, sans doute ;
Mais lorsque le hazard me met sur cette route,
Sans demander à Dieu si j'ai tort en cela,
Je découvre mon front devant ces tombes là !

LOUIS FRÉCHETTE.

Deserved it,—yes— perhaps! Yet men will say
They were in truth five heroes after all!

I bow, no doubt, to the decree that struck them,
Yet, when by chance I pass along that road,
—Not asking God if I be right or wrong—
I pause— uncovered—near those lowly graves!

G. W. WICKSTEED.

This story is true. Dr. Fréchette gives the names of the five, viz: Marguerite Racine,—Laurent Racine,— Félicité Doré—Pierre Cadrain,—Jean Baptiste Racine, father of Laurent;—and that of the Bishop of Quebec, who pronounced the Anathema,—Monseigneur Briand.

LE DRAPEAU AGNLAIS.

Regarde, me disait mon père,
Ce drapeau vaillamment porté;
Il a fait ton pays prospère,
Et respecte ta liberté.

C'est le drapeau de l'Angleterre;
Sans tache, sur le firmament,
Presque à tous les points de la terre
Il flotte glorieusement.

Oui, sur un huitième du globe
C'est l'étendard officiel;
Mais le coin d'azur qu'il dérobe
Nulle part n'obscurcit le ciel.

Il brille sur tous les rivages;
Il a semé tous les progrès
Au bout des mers les plus sauvages
Comme aux plus lointaines forêts.

Laissant partout sa fière empreinte,
Au plus féroces nations
Il a porté la flamme sainte
De nos civilisations.

Devant l'esprit humain en marche
Mainte fois son pli rayonna,
Comme la colombe de l'arche,
Ou comme l'éclair du Sina.

THE BRITISH FLAG.

Behold, my son, my father said,
That gallant banner bravely borne;
It made thy country prosperous,
And hath respected liberty.

That banner is the British Flag;
Without a stain beneath the sky,
O'er almost every coign of earth
It floats unfurled triur phantly.

Over an eighth part of the globe
It waves the ensign of command;
Covering a little patch of blue,
But nowhere dimming heaven's light.

It waves o'er every sea and shore;
And carries progress where it flies;—
Beyond the farthest ocean's verge,
And to remotest forest lands.

Leaving on all its proud impress,
To wildest tribes of savage men
It comes the harbinger of light
And civilizing arts of life.

And in the march of intellect,
How often hath it shown the way,
Like the dove loosed from out the ark,
Or Sinai's guiding column's glow.

Longtemps ce glorieux insigne
De notre gloire fut jaloux,
Comme s'il se fût cru seul digne
De marcher de pair avec nous.

Avec lui dans bien des batailles,
Sur tous les points de l'univers,
Nous avons mesuré nos tailles
Avec des résultats divers.

Un jour, notre bannière auguste
Devant lui dut se replier ;
Mais alors s'il nous fut injuste,
Il a su le faire oublier.

Et si maintenant son pli vibre
A nos remparts jadis gaulois,
C'est au moins sur un peuple libre
Qui n'a rien perdu de ses droits.

Oublions les jours de tempêtes ;
Et mon enfant, puisque aujourd'hui
Ce drapeau flotte sur nos têtes,
Il faut s'incliner devant lui.

—Mais, père pardonnez si j'ose...
N'en est-il pas un autre à nous ?
—Ah ! celui-là, c'est autre chose :
Il faut le baiser à genoux !

LOUIS FRÉCHETTE.

Of old that glorious flag with ours
A jealous rivalry maintained;
Deeming itself the only peer
Of ours in the race for fame.

In many a famous battle then;
In every quarter of the world,
With ours it measured strength with strength,–
Victor and vanquished each in turn.

One day our fleurs de lis were doomed
Before that rival flag to bow;
But if it wrought us sorrow then,
It since has taught us to forget.

And if to-day it floats above
Those ramparts that were French of yore,
It waves above a people free,
And losing nothing of their rights.

Let us forget the stormy days;
And since, my son, we have to-day
That banner waving o'er ours heads,
We must salute it reverently.

—But, father,—pardon if I dare:—
Is there not yet another,— ours?—
—Ah! *that*,—that's quite another thing;—
And we must kiss it on our knees.

G. W. Wicksteed.

THE HISTORY OF CANADA.

By WILLIAM KINGSFORD.

Vol. 1. Toronto: Rowsell & Hutchinson 1887.

It is the natural and laudable desire of every man to know what he can of the history of the land he lives in, and in the volume mentioned in the heading to this article, Mr. Kingsford undertakes to tell us the story of Canada under French rule, from its earliest date to 1682. We understand that his intention is to continue the work to the Union of Upper and Lower Canada in 1841, so as to comprise the history of our country under French rule, until the capitulation of the Marquis de Vaudreuil in 1760, and its cession to Great Britain by the Treaty of Paris in 1763; and thereafter under the Government of Great Britain and of the United Kingdom of Great Britain and Ireland.

Mr. Kingsford's qualifications for the work he has under taken are—the intense interest he takes in his subject, indefatigable industry, a perfect knowledge of the languages in which the documents from which his information is derived are written, and a familiarity with the archives of Canada, now under the charge of Mr. Brymner, to whose ability and courtesy Mr. Kingsford bears ample and deserved testimony in his work on the archæology of Canada,—and above all a reputation and character which justify our full faith in the assurance he gives in his opening chapter: "That he will make every effort to be fair and honest," and in his confident hope "that those with whom he may have the misfortune to differ, will recognize that he has consulted original authorities, and that whatever opinions he expresses are not hastily or groundlessly formed; but that, on

the contrary, he has warrant for the belief that they are fully sustained by evidence." With this assurance he enters upon the story of the occupation and colonization of Canada, and shows us that in Canada, as in the English colonies in North America, the work was commenced, not by the Government, but by private entreprise moved by the spirit of adventure and the hope of gain, aided after a while, in Canada, by the desire to extend the influence of the Church, and for the conversion of savage nations to Christianity; receiving later some official assistance by the incorporation of a company with means and influence and special powers of settlement and organization; and lastly, by the direct intervention of the Sovereign, and the assumption of the government of the country by France as a Royal possession. He then narrates in ordered sequence, the three voyages of Cartier to the St. Lawrence, and his ascent of that river to Montreal, his attempt at settlement, and the sufferings he and his crew endured from the Canadian climate in winter, his discouragement and return to France; the twelve voyages of Champlain, his discoveries and explorations of the great rivers and lakes, his skilful diplomacy in treating and dealing with the Indians, and finally his appointment as Governor-General of Canada; the conquest of Quebec by the English under Kirke, in 1629, its occupation by them for three years, and its restoration to France under the Treaty of St. Germain-en-Laye.

He then places vividly before the reader the great events and actions of what Lord Lansdowne, on a late occasion at Montreal, rightly styled *the heroic age of Canada;*—the long, fierce struggle with the Indians, then a numerous and most formidable enemy;—the attacks upon the French settlements and posts by tribes coming often from very distant parts of the country, as the Mohawks from the country still bearing their name in Western New York; and the counter expeditions of the French against them to like distant places, through tracts of

thickly wooded country, with only the Indian trail for guidance and without horses or carriages, or in canoes over lakes and rivers then recently discovered and but little known;—their explorations of theretofore unknown lakes and rivers, from the St. Lawrence upward to Lake Superior, and of the country north of it to Hudson's Bay, and southward down the Illinois and Mississippi to the Gulf of Mexico; the hardships suffered in these daring expeditions and explorations, and the courage and perseverance displayed in overcoming them;—the victories and defeats, successes and disappointments, incident to these Indian wars;—the various modes and forms of government tried by the adventurers, by the Company of the Hundred Associates, or by the Council appointed by the Crown or Governor; the introduction of the Seigniorial system; the contests of the ecclesiastical and lay elements for supremacy, and especially on the burning question of the prohibition of the sale of liquor to the Indians, in which Frontenac and Bishop Laval took opposite sides, the Governor being the winner:—and, in a word, the cares, labours, trials and vicissitudes of fortune under which were laid the foundations of the land we now live in, and in the narration whereof Mr. Kingsford shows us "Quantæ molis erat *Canadensem* condere gentem." He intersperses in his narrative incidents from the history of France, and even of England, respecting religious and political events, and throwing light on Canadian history, and short sketches of the lives and characters of those who play parts in his drama, and does full justice to the ability and firmness of Frontenac, the indomitable courage and perseverance of De La Salle and his fellow pioneers in discovery, De Tonty, Duluth, Jolliet and others; the ability and religious zeal of Bishop Laval, and the martyr spirit of the Recollets, Jesuits, and religious ladies;—but his hero is Champlain, whom he calls the True Founder of Canada, and whose character and deeds he paints in glowing terms. Indeed, we cannot give our readers a better

idea of the spirit and style of Mr. Kingsford's book than by citing the following excerpts from his character of Champlain which follows the narrative of his death, and the incidents immediately preceding it:

"There are few men whose characteristics can be more distinctly traced than those of Champlain; there are few characters which more satisfactorily sustain the examination bestowed on them. There is no moral leaven to weaken the regard or esteem with which Champlain's character must be considered. It is seldom that we become acquainted with a life in which the pure, tranquil, constant advance of an individualism can be so fully traced. . . . There is no character known to us in the British or French history of the American continent in modern days, which can advance higher claims to honourable fame. If I were to make a comparison between Champlain and any historic name which we possess, it would be with that of Julius Cæsar, with whose excellencies and genius he bears strong relationship unalloyed by those vices and that social deformity which marked Roman life. Much of the brighter side of Cæsar's character is repeated in that of Champlain; his equanimity, his liberal opinions, his triumphs over difficulties and misfortune, his modesty and ability in relating his actions, his high-bred stoicism. . . . Both cultivated the elevating and consoling pursuits of literature. . . . Judged by his writings Champlain comes before us with a rare modesty, and a careful observation of truth, so that his statements obtain immediate acceptance. A quiet humour runs through all he tells us. He does not sacrifice reality to effect. . . . To him discovery was not merely sailing up the waters of a river and never penetrating beyond its shores. His genius was to advance to distant localities, to learn the resources of a country, its character, the extent of the population of the native tribes, and to study their manners and customs. He saw that the only means

of gaining this end was by identifying himself with the Indians, with whom he entered into friendly relations. His discoveries were remarkable: he made known from personal examination the Ottawa, Lake Huron, Lake Ontario, the St. Lawrence which he correctly describes, and Lake Champlain. He indeed traced out the southern portion of the Province of Ontario, without the precise minor details. . . . No statue, no monument has been raised to Champlain's memory. No memorial exists to teach the youth of the Dominion what excellence there is in a noble, honest life, marked by devotion to duty, and an utter disregard of self. Canada has shown no honour to his name. It remained in modern days for Laval University to disseminate the true perpetuation of his genius in the record of his life and labours. It is a contribution never to pass away, and one by which Laval has established an enduring claim to consideration in the world-wide republic of letters. . . . Champlain's name is imperishably written in the first and foremost pages of his country's history; it is the name of a man of genius, of pure and untarnished honour, the True Founder of Canada. *(See pp.* 131 to 134.*)*" A captious critic might object to the comparison of Champlain to Julius Cæsar, and our substitution of *Canadensem* for *Romanam* in Virgil's line,—but we must remember that, although not invested with the Imperial purple, Champlain's were

" Hands that the rod of Empire might have swayed,"

and he would have made a better legislator than the monarch whom he served. No French-Canadian can be dissatisfied with the account the book gives of his ancestors, and no English-Canadian can refuse to acknowledge the merits of his French precursors. We trust both will like and patronize this work, and though some may differ from opinions expressed in it with which others

may agree, none can charge it with wilful mistatement or unfair prejudice.

Mr. Kingsford's style is simple and clear. Some minor slips of the pen or press may be found by keen-eyed critics, but they can mislead no one. We think it would be well if the author had appended, or would append in a future volume, a brief account of the several Indian tribes and the tracts of country they inhabited, and of the religious orders which are prominent in his narrative. But, take it all in all, no book yet published in English seems to us to give so clear and detailed an account of the period of French government in Canada as the one before us; and, believing as we do for the reasons we have stated, that its statements of fact are correct, we hold it to be a work which no student of Canadian history can afford to be without. It is well got up and printed, and the dates inserted at the head of each page of the events recorded in it, much acilitate its use.

KINGSFORD'S HISTORY OF CANADA—Vol. II.

Mr. Kingsford continues his important and laborious work, and we have before us the second Volume of his "History of Canada" The first contained the story of our country under French rule, from the earliest date down to 1682; the present volume continues is down to, 1725, embracing the events occurring in the first administration of De Frontenac, those of De la Barre and Denonville, the second administration of De Frontenac and those of De Callières and Vaudreuil; in the reigns of Louis XIV and Louis XV of France, and of Charles II, James II, William and Mary, William III, Anne and George I in England; a period fraught with most important events for Canada and the British Colonies in America, as well as to the

mother countries of both: and very interesting he has made the story he had to tell, and has told in the 518 pages of the book, and an appendix by which he elucidates the events he has related.

It is impossible, in the limited space allowed us, to give more than a very summary account of the scope of this important work, and to mention some few of the matters as to which we think it relates facts not generally known, or gives them with fuller details, or places them in a new light. It continues the account of the dissentions in the council and the occurrences which led to the recall of De Frontenac, and the changes following it until his re-appointment as governor, and then deals with those stormy times and events in Canada and the neighbouring colonies during his second administration, the effect of which still is, and will be long deeply felt. The ancient feud between the mother-countries was continued with increased intensity and bitterness between New France and New England and the other English settlements, and to the suffering and horrors attendant on war in the older countries were added the atrocities of barbarism and savagery; for both sides employed the Indian, and war was conducted after the Indian fashion—cruel, pitiless and unsparing—by attacks generally in the dead of night, when neither women nor children were spared, and when prisoners were given up by Christian leaders, at the demand of their savage allies, to Indian revenge and torture. Plans were laid by each side for the destruction of the other; by the English for the conquest of Canada, and by the French for that of New York, with intentions as to a mode of dealing with the conquered less lenient than that adopted towards Canadians when they became British subjects. Both plans came to naught.

A separate chapter is devoted to the history of Acadia during the period to which the volume relates, and the war carried on between it and New England, in which the Indian tribes of the

Abenaquis and Canabas were employed on the French side, and many attacks made on New England villages, including Cocheco and Pemaquid, in which the spirit of Indian warfare was fully developed, and murder, arson and pillage reigned supreme, as they did in the massacres at Schenectady and Lachine by the Iroquois as allies of the English. Mr. Kingsford has partly supplied a want we noticed in our account of his first volume, by a long note about the Iroquois, or Five Nations, and the several tribes which comprised the Mohawks, Oneidas, Onondagas, Cayugas and Senecas, and the tracts of country occupied by them. These tribes generally took part with the English. We think the note should have included the Algonquins, Abenaquis, and others who sided with the French.

The account given of the abortive attempt at the conquest of Quebec by Phips in 1690, is very interesting, and the scene between his party and De Frontenac, who was given, by the New England Major, one hour to consider the surrender of the Fort and its stores, is very picturesque, and by no means to the credit of the New Englanders. Phips was a brave man and an excellent sailor, and found his way safely up the St. Lawrence and out of it, but he had no skill as a soldier or a diplomatist, and his discomfiture and retreat show the impolicy of New York in sending him. There is also a graphic and detailed narrative of the unfortunate attempt to attack Quebec by the English fleet under Admiral Hovenden Walker in 1711, when by strange want of seamanship and precaution, eight ships and nearly one thousand men were lost at the entrance of the St. Lawrence which Phips had passed with ease and safety.

The account of the tragic death of De la Salle is touching and sad, and the summary of his adventures and discoveries very interesting, as is that of his character as a man equal to any amount of adventurous daring, but deficient in that power of winning and keeping respect and affection which ensures un-

hesitating obedience and faithful service, while he had a haughty manner which excited anger and dislike, under the influence of which he was murdered by two of his own followers. Mr. Kingsford states his belief as to the manner in which De la Salle's movements and conduct were probably influenced by the Spaniard Penatossa, and the expedition under his command.

A short extract from Charlevoix gives a pleasant description of life and society in Canada in 1720 as compared with that in the English settlements, very prettily translated, and by no means unfavourable to our countrymen of that date, and still less to our countrywomen of the same period.

The account of the death and character of De Frontenac are graphic and fair, with "nothing extenuated nor aught set down in malice"; our author defends him against the charges of extravagant pretentions to power and the adoption of a policy for private ends, of violence of temper, and of exaction of personal consideration without true dignity; adding, that even if these faults be conceded, he still stands forth the most prominent of French Governors, and that the great stain on his name is the ruthless character of the masacres which he authorized; and of this he says "His nature was genial and kindly, and the fault may be attributed to the school in which he was reared, and the maxim of war then recognized—that anything whatever that caused disaster to an enemy was permissible." Our historian calls him the "Second Founder of Canada," and winds up with Charlevoix's epitaph: "After all, New France owed to him all she was at the time of his death, and the people soon perceived the great void he had left behind him."

As an appendix, Mr. Kingsford has added a full and detailed account of the negotiations and events which led to the Treaty of Utrecht, which had so important effect upon the boundaries of Canada and the then English Colonies, and the terms of which he believes would have been much more favourable to England, if

the conduct of the latter years of the war to which it put an end had been left to the Duke of Marlborough, of whom he speaks in terms of the highest admiration, as a general and a man of honour and unswerving fidelity to his country, and whom he holds to have been removed by the sovereign from his command under the influence of mean jealousy and intrigue, and defends from all the charges which had been brought against him; though he acknowledges his love of money to have been inordinate. The chapter is interesting as an essay on a moot point in English history, as well as in relation to Canada. The account is not flattering to the courts and sovereigns engaged;—corruption was at least as flagrant then as now.

Mr. Kingsford has thus performed the promise he made, and given us a history of Canada during the time over which his two volumes extend, which leaves little to be desired in extent of scope or fulness of detail, ably, and, as we believe, conscientiously written, with as much impartiality as human frailty admits of, after a faithful and indefatigable examination of trustworthy authorities. His style is simple and clear, preferring truth to rhetorical effect. He appears to have spared no pains to think rightly, and to say inteligibly what he thinks. We can say of this volume, as of the first,—No student of Canadian history can afford to be without it.

KINGSFORDS HISTORY OF CANADA—Vol. III.

We have been favored with copy of the work of which the title forms the heading of this article, and though our journal is not a literary review, nor the work in question a legal essay or report, it is one so deeply interesting to all Canadians, and to lawyers certainly not less than others, as a record of events which have made Canada what it is, that we feel bound to call

the attention of our readers to it, and to give such brief account of it as we did of the two volumes which preceded it.

We were at first rather dissappointed to find that this volume does not bring the history down to the conquest; but Mr. Kingsford in his brief and modest preface, explains that he not only found it impossible to fulfil his intention of bringing it down to that period, but also, that although the capture of Quebec might be virtually considered the termination of French rule in Canada, yet the events between that capture and the final cession of the country under the treaty of Paris, in February, 1763, formed so important a part of its history that his work could not have been considered complete unless it included them, and that an account of these events and those prior to the conquest and not included in the present volume, would of themselves fill a fourth, on which he is now occupied, and which he hopes to publish in September, 1890. Among the events so referred to are—Levis' attack on Quebec, with Murray's defeat in May and the capitulation of Montreal in September 1760, followed in 1763 by the treaty of Paris; while among the subjects indispensable to the completion of his work and included with others in the present volume are—the history of Hudson's Bay up to its cession under the treaty of Utrecht; a summary account of the settlement of Louisiana in its relationship to Canada; and the events in Acadia after its cession under the treaty of Utrecht, including the creation of the Province of Nova Scotia, and the foundation of the city of Halifax; the capture and subsequent restoration of Louisburg; the capture of Port Royal (now Annapolis); the fruitless expedition of the Duc d'Anville; the sufferings and surprise of the New England troops by Coulon de Villiers in Acadia; De la Verendrye's explorations; the character of de la Galissomière; de Celeron's expedition up the Ohio; the founding of Ogdensburg, by Picquet; the charac ter and intrigues of LeLoutre; the Marquis Duquesne's expedition

to the Ohio; Braddock's expedition against Fort Duquesne, his defeat and death; Dieskau's expedition on the west side of Lake Champlain; the extraordinary ecclesiastical quarrel at Quebec in 1727; the state of Canada and Canadian society in 1755-6.

This volume contains 578 pages, divided into 5 books, each again divided into chapters. It is very handsomely and clearly printed, the type and paper are good; and it is altogether got up in the best modern style. It has a very full table of contents; four small but very useful maps; many explanatory notes, and full references to the authorities for statements of fact, and in many cases, citations of important passages from documents referred to. There is no verbal index to persons and events, but Mr. Kingsford promises that a very full one shall be given with the fourth volume, to it and the three preceding it. His style is clear without attempts at oratorical flourishes and effects; and we hold with respect to this volume, the same conviction of the author's conscientious fidelity, care and labour in collecting and verifying the facts he relates, the impartiality of the inferences he draws from them, and his characterizations of the personages whose acts he records, which we have expressed as to the preceding volumes; and as an instance of his fairness we give his character of Rasle a Jesuit of the Jesuits, a body for whom Mr. Kingsford has as little love as we have:—

"In spite of Rasle's persevering hostility to New England and his never ceasing attempts to embroil England and France in war, for a small extent of border territory which even to-day is but imperfectly settled, he demands our sympathy from the high qualities he possessed. Had he been placed in a wider field of action where his energy could have been exercised, and by experience and contact with the world he could have learned to overcome his prejudices, he might have been remembered in history by the side of Richelieu, Mazarin or Alberoni. Great powers always command respect, especially when allied with those

brilliant traits of character which impress us by their physical, rather than by their moral force. To Rasle's high ability he added unfaltering courage and self-reliance; and it was by no means in disaccord with his character that he refused to give or take quarter. In his young years he had been an earnest student of polite literature. At the Jesuit's College he had been distinguished by great application, and was an elegant Latin scholar; and throughout his life, though he had been a missionary for many years living with savages, he retained these tastes. He had obtained a perfect knowledge of Abenaki, and had attempted to give it some grammatical form. He had taught several of his people to read and write, and he delighted to correspond in their own languages with them. He is said even to have written Indian poetry. He knew the Dutch language to speak it; English only imperfectly. He had a hatred of everything English, the people, their language, their protestantism, their mode of life; and accordingly his manners were often offensive. There was no deceit on his part in his enmity, it was openly expressed; and Rasle by the side of ruffian like Le Loutre appears a saint."

The covert designs intended by the French to be accomplished through the Indians, and Rasle's intrigues for that purpose, are narrated at length.

Mr. Kingsford is English, and of course wishes to give the English view of some matters upon which he thinks existing histories have created erroneous impressions, and the first two chapters of this volume are devoted to a defence of the English claim to the discovery and right of possession of Hudson's Bay. He says, and appears to us to prove, that nothing can be more clear than the English claim to the discovery of and settlement on these northern waters; the northern part of America being discovered in 1497, by Sebastian Cabot, under a commission from Henry VII, and Hudson having in 1610, by authority of James I,

taken possession of the bay and straits that bear his name: and he then cites his authorities and states at length his reasons for the opinion he expresses.

Another and more important matter, since it affects England's reputation for justice and humanity, is the account he gives of the deportation of the inhabitants of a certain portion of Acadia, in 1755, on which the American poet, Longfellow, has founded his pathetic and beautiful poem, Evangeline, which does not directly reproach the English authorities with harshness or cruelty, but yet leaves the impression that the proceeding which was aided by the New England colonists, and cannot have been disapproved by them, had something of cruelty and tyranny in it. In England it was looked upon as an act of painful necessity, a duty unwillingly undertaken, and performed with as much care to prevent unnecessary suffering as possible. Families were not separated, and were allowed to carry with them all their portable effects for which room could be found in the vessels which carried them. They had brought the suffering upon themselves. For forty years, says Mr. Kingsford, the country had belonged to England, and all its inhabitants over forty years of age had been born British subjects. They had been repeatedly asked to take the oeth of allegiance, and had refused, sometimes with insolence, and on every possible occasion joined the French and Indians in their savage attacks on the English colonists and their property. Every Acadian was a spy to give intelligence to the enemy, and their removal was a painful but unavoidable act of self-defence. We request any doubting reader to peruse Mr. Kingsford's statement of the case in chapter VI of Book VIII.

The time covered by this volume, extends from 1726 to 1756, and embraces the administration of the several Governors of Canada during that period, viz.—Le Marquis Beauharnois, Le Marquis de la Jouquière, Le Marquis Duquesne, and Le Marquis

de Vaudreuil, and portions of the reigns of Louis XIV, and Louis XV, in France, and George I, and George II, in England.

It is impossible in the limited space allowed us to give any idea of the amount of information and detail in the volume before us, containing as it does a very full account of a most important part of the struggle between France and England for the possession of the northern part of America. The period embraced has been called the heroic age of Canada, and it was so as regards daring, hardihood and adventurous spirit, but it was not the age of Chivalry, or generous rivalry in arms, but that of "savage, unrelenting, murderous war," between two nations who had been rivals from the time of the battles of Hastings, Cressy and Agincourt, adopting as allies the Indian savage, and forced by such alliance into permitting, if not adopting, all the abominations of Indian warfare. The book before us is crowded with details of such warfare; midnight attacks on villages, the murder of their inhabitants and destruction of their property, the carrying off of women and children into life slavery, and the torture of prisoners, sometimes with the consent of Christian allies, and sometimes in spite of them. The attack and destruction of Deerfield, and the reprisal on Norridgewock being specimens of the manner in which the contest between two great Christian peoples was conducted in America. Mr. Kingsford believes, and we are most willing to believe with him, that the worst things were not done on the English side, but there were Indians on both sides, and the Christian victors were sometimes forced to shut their eyes while their allies indulged in the pleasure of burning a few captives. This was called *la petite guerre*. Up to the time when the narrative closes, the fortunes of the French seem to be in the ascendant; they had destroyed Oswego, defeated Braddock, and extended their holdings on Lakes Champlain and Ontario, and the Ohio, and had gone down the Mississipi to New Orleans, round the English

Colonies; their reinforcements from France, their despotic form of government and the military character of their people giving them a decided advantage over the democratic and seperate governments and the mercantile and agricultural habits of the English colonists; so that but for the coming into power of the first Pitt, and his energetic policy and action, they might possibly have carried into effect their cherished idea of driving the English into the sea, or at any rate of confining them to the Atlantic seaboard. But Pitt came to the helm of state, and sent Wolfe, and roused the latent energies of the English colonists, and it was not long before the aspect of affairs was changed, and Canada became an English Province.

G. W. W.

COMMERCIAL UNION.

Editor of THE CITIZEN.

SIR,—Mr. Chamberlain's answers to his interviewers on the subject of Commercial Union and Unrestricted Reciprocity are so perfectly clear and so exactly cofirmatory of what you and your correspondents have said about them that I cannot help congratulating you on the fact; and they are so wise and convincing that I think Canada may feel sure that her interests and honour are safe in Mr. Chamberlain's hands. He holds Commercial Union to be a surrender of the power of taxing ourselves into the hands of the United States, and so ceasing to be an independent country, which would imply the giving up all claim to become a nation; and Unrestricted Reciprocity to be an impracticable scheme, leaving the Custom Houses along the

3,000 miles of border line, with the difficulty of ascertaining the origin of every article of commerce passing them, which was found insuperable in England. I wish the supporters of either of the two "fads" joy of Mr. Chamberlain's opinion of their bantlings.

It has been said that the Americans object mainly to what they consider the harsh and unneighbourly provisions of the treaty of 1818, denying their fishing vessels the right of entering Canadian ports for commercial purposes; and it does seem to one not cognizant of the intentions or motives of the framers of the treaty, that the said provisions must have been inserted solely for the purpose of preventing such vessels from entering upon and fishing clandestinely within the three-mile limit, for neither their buying and selling, or exchanging cargoes, or forwarding them over Canadian railways, could be injurious or indeed otherwise than advantageous in themselves to Canadian interests. Our neighbours say they do not want to fish within the three-mile limit, and if the obnoxious provisions were really only intended to prevent them doing so, would not they themselves help to prevent such unlawful fishing, and instruct their cruisers to assist ours in this duty and so remove these objectionable provisions? Our neighbours only ask that we should do by them what they say they are ready to do by us; cannot means be found to avoid what seems to hurt and annoy them without doing us any good? or if it does us any good Uncle Sam might make some little concession in return for its removal. The headland difficulty might be easily settled by the commissioners, or if not, by arbitration; and so also the Behring Sea difficulty, where it would seem the harsh dealing has not been on our side. Where there is a will there will be found a way, and on both sides justice only can be desired. "Blessed are the peace-makers." Some are unwise enough to think that Commercial Union would settle the fisheries difficulty. It would give us

free trade in fish; it would not give them our in-shore fisheries, or take away our exclusive right in them. Annexation might, and that would be granted if the two Houses of our Parliament asked it, and they would ask it if Canada wanted it—but Canada does not.

W.

Ottawa, December 27th, 1887.

MR. HITT'S RESOLUTION.

Editor of THE CITIZEN.

SIR,—Mr. Hitt in offering us Commercial Union is kind enough to say that Canada should be *consulted* in arranging any tariff intended to be common to her and the United States; and as such consultation could only be made effective by giving us a vote in the arrangement, this concession is an admission that representation must accompany taxation. If the United States Legislature is to tax us, we must be represented in it as to such taxation; and though, as Mr. Hitt says, sixty millions must of course control five, a vote of one-twelfh is better than no vote at all, and may even have very considerable effect in a body by no means unanimous on tariff questions. And our right must extend not only as to the tariff itself (including excise or internal revenue), but as to all enactments relating to or affecting it, or the officers, courts and authorities by whom it is to be carried into effect, the laws affecting it administered, and the revenue collected, accounted for and divided. And as it cannot be supposed that such tariff and laws are never to be altered, Canada must in

like manner have a vote in any such alterations. The representation or number of votes for these purposes, should be regulated, as in the United States, by population in the Lower House and by provinces in the Senate. Our representatives would, of course, only vote upon the matters aforesaid; but as debates on such matters may come on at any time, they must always be on hand and ready. The arrangement must be for all time, for it would never do to have to discontinue it, and to re-establish the old laws and custom-houses along the boundary line, from time to time. Would the United States agree to this? And if they would, how must the agreement be made? Canada has not treaty-making powers, for the plain reason that England could not be bound to enforce treaty conditions made without her approval and assent; nor would she be likely to assent to a treaty to last forever, and we have seen that a temporary arrangement would not answer the purpose. The matter would clearly be one difficult to manage; but probably, if Lord Salisbury, the President and Sir John agreed upon it, the thing might be done. Mr. Hitt has, perhaps, considered the little difficulties in the way, and sees his way through them: if so I should like to see his *modus operandi;* for it seem to me that Commercial Union, instead of merely leading to Annexation, is the thing itself, and must rather be preceded by, than follow it.

Unrestricted Reciprocity would not be quite so hard to work out; but hard enough if it is to extend to all productions or manufactures of either country. It would not remove the Custom houses along the boundary line, for there would remain the difficulty of proving the place of production. Mr. Chamberlain when here, stated the difficulty the question of *origin* had occasioned in England; and I have read lately that a Sheffield cutler complained not of the competition of foreigners as to the goods made by them, but of their marking them as made in Sheffield. I believe it is intended that articles subject to duties of

of excise or internal revenue must be excepted. No one disputes the desirability of the freest and most amicable intercourse with our cousins south of us, and the removal of every check to trade with them; but we cannot help considering the cost at which this is to be done.

Whatever objections there may be to permanent protection we cannot break faith with those whom we have induced to establish manufactories which cannot yet compete with foreigners, though we may hope they will be able in time to do so. And can we afford to abandon the revenue from duties on American manufactures? Our Treasury is not overflowing, and our people rather object to direct taxation. True we have some among us who favour Mr. George's scheme, and would make the land holders pay for all; but the plan is not generally liked, though is it favoured in theory by eminent political economists, as to "unearned increment," or increased value of real property not produced by the labour or capital of the owners. There is difficulty in applying the theory to improved property. A feasible plan by its supporters, say in Ottawa, would be very useful; there is a very large amount of "unearned increment" in this city, and some even in the two hundred feet along the canal, now in dispute in the Exchequer Court, which, if it should give the land to the claimant, might, perhaps, subject it to the repayment of the said "increment." The Court might say something on this point *obiter*.

W

Ottawa, 6th Jan. 1890.

POWER OF DISALLOWANCE.

To the Editor of THE CANADA LAW JOURNAL :

DEAR SIR,—In what you say in your last number of the great usefulness and value of Dr. Bourinot's lectures I perfectly agree; they well deserve to be made a text-book on the subject to which they relate, and ought to be in the hands of every student of the professi on of the law, and, indeed, of every citizen who wishes to know his rights and duties as such; and the admitted lawyer will find it worth while to have them at hand for reference. They state very clearly the constitutional law on non-doubtful points, and on doubtful ones they offer comments and suggestions wisely and lucidly thought out, and aidful towards their solution. I can hardly think you right in supposing that Dr. Bourinot favours the doctrine that the power of disallowance of Provincial Acts should be exercised only in cases where the powers of the Provincial Legislature are exceeded, though I agree with him that the power in question should be exercised with the utmost caution and regard for Provincial rights. I observed in a late number of *The Week* something like the doctrine to which you suppose Dr. Bourinot leans, but adopting it rather more decidedly than you suppose the Doctor to do, and, indeed maintaining that disallowance should never be resorted to except when the disallowed Act is *extra vires;* and in some other papers I have seen a like opinion expressed, accompanied with an intimation that our Premier had adopted it. I do not think this doctrine correct, and I think Sir John repudiated it in his speech at the laying of the corner stone of a Methodist church, and said, as a writer of the article in your journal does, and as I humbly follow them in believing, that the power of disallowance was intended to be exercised whenever the Provincial Act contained any provision

inconsistent with the safety, honour or welfare of the Dominion; as, for instance, repudiation of a Provincial obligation or contract, or any provision inconsistent with justice or morality. To confine the exercise of this power to cases where the Act is *extra vires* would make it superfluous and useless, for the Act would be void to all intents and purposes, and might be so declared by any court before which its illegality should be pleaded, at any time after its passing, and although it should have been sanctioned without objection. It might, of course, be disallowed, and its disallowance desirable to avoid doubt, delay and litigation; but the intent of the disallowance provision in the constitutional Act was not merely to stop the unlawful assumption of power by the Provinces, which the courts could do, but to prevent the abuse of the powers vested in them but exercised to the detriment of the Dominion. I think this power of disallowance is rightly vested in the Governor, acting by and with the advice of an Executive Council under the virtual control of the Dominion Parliament in which all the Provinces are represented, rather than in any court, which could only have determined the legality of an Act questioned, and not its policy and effect on the Dominion generally. Vested as it now is, I hold the power of disallowance to be useful, and indispensable to the conservation and welfare of the Dominion.

W.

16th Nov., 1889.

DISALLOWANCE QUESTION.

Editor of THE CITIZEN.

SIR.—On Saturday night last there was triumph on one side and wailing on the other over the result of the election of a member of the Dominion Parliament; but now there is triumph

on both sides in the victory of patriotism over party spirit, on Tuesday, when Mr. Blake moved in the House of Commons a resolution for enabling the Government to obtain in the best possible manner, a reasoned advisory opinion on legal points in cases respecting the disallowance of Provincial Acts, or appeals in cases touching Provincial enactments on educational matters; and Sir John Macdonald cordially accepted the suggestion, subject to the condition that when such opinion assumed the shape of a decision, there should be an appeal to the Judicial Committee of H. M.'s Privy Council; and the motion so conditioned was unanimously accepted by the House. Both parties now agree that the mere fact that a Provincial Act is *intra vires* is not a reason that it should necessarily be allowed, but that the power of disallowance was intended to be and ought to be exercised whenever the Provincial Act is inconsistent with the saf[illegible], honour and interests of the Dominion; and that to m[illegible]n a contrary opinion is to make the Imperial provision superfluous and useless, as a Provincial Act *ultra vires* would be null and void, and might be so declared at any time by any court before which such nullity was pleaded. It might, however, be desirable to prevent by disallowance the anxiety, trouble and perhaps ruin, it might occasion to many if such Act were allowed to be supposed in force until formally declared null. There is now a provision enabling the Government to obtain the opinion of the Supreme Court in certain cases, but Mr. Blake wishes his tribunal to have the fullest powers for obtaining evidence and hearing arguments, as well on matters of fact as on points of law, and special enactments will be necessary for this purpose, including the appeal to the Judicial Committee of Her Majesty's Privy Council. No decision under the proposed arrangement would destroy or impair the power of disallowance, but as such decision might influence the question of the exercise of that power or the subsequent action of the Provincial Legislature, or of the Governor-

in-Council in educational cases, and judges will not be hurried, it might be desirable to obtain an extension of the period now fixed for disallowance. There would be no difficulty in obtaining it; there was none in obtaining the Special Imperial Act for permitting representation of the North-West Territories in the Dominion Parliament. The matter is now in the hands of the leaders of our two parties, and will be well cared for; and the country may be congratulated on having an opposition able to propose so useful a measure and a Ministry wise enough to accept and perfect it.

Ottawa, May 1st 1890. W.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—I like your last number much, and I was pleased to see that you had taken that very singular article from *Pump Court* about lithographed signatures, where the judges say that the subject is one upon which no two men could differ—and yet they all differ, the one from the other. The "glorious uncertainty" stands out in bold relief—and what a nice amount of costs might have been incurred if two rich litigants had been the parties interested! It has often struck me that the great facility of appeal from court to court, and the possibility, or even probability, of one winning his case and losing it ultimately, amounts almost to a denial of justice. Especially is this the case when we consider that, after having been encouraged to believe that he is right by judge after judge, a suitor of moderate means may be ruined by his first success, and through reliance on the judges appointed and well paid, by Government to decide his case. I would suggest that the Government be compelled to pay the costs incurred by the mistake or negligence of the judges whose decisions

were reversed on appeal to the court of last resort. The judges might not like it, but it would certainly make them more careful. If I employ a professional man, and by his want of skill or diligence about the work which he is employed to do I suffer damage, he must idemnify me. I employed him relying on the maxim "*cuique in arte sua perito credendum est*," and he turns out not to be sufficiently *peritus*. The public who pay the judges do so believing them to be *peritissimi*. Where is the fallacy?

We have the new Banking Act at last. I hope you will procure a copy, and tell us what you think of it. I, for my part, do not quite like the idea of the good banks guaranteeing the notes of the weaker ones, who might be tempted to issue by this provision—but *nous verrons*. There, I have sinned by writing you officially in French (to you, a champion of Equal Rights!). Pardonnez, Monsieur. By the way, do you exchange with the *Canada Français Review?* The last number contains a statement of the amount of Peter's Pence for last year, viz., $600,000, which, at one soul for each penny, would make sixty million souls: a goodly number to make into good Presbyterians, or Methodists, not to say Churchmen. I wish we could so manage it. The *Review* is under the supervision of the Professors of Laval, and is well written.

You will remember that in a little book I printed for private circulation only among my friends, and of which I gave you a copy, I made the following remarks about certain violations of the Act of 1887, amending that respecting the Independence of Parliament: "Many members have since resigned under its provisions, and almost all of them have been re elected. The Act says nothing about profits (if any) obtained by the violation of the law, leaving the question open, as a matter of conscience, on which honourable members could scarcely have any doubt. Hamlet's uncle had a very strong opinion on the point:—

Then I'll look up,—
My fault is past—But oh, what form of prayer
Can serve my turn :—Forgive me my foul murder,—
That cannot be, since still I am possessed
Of those effects for which I did the murder,
My Crown, mine own ambition, and my Queen :—
May one be pardoned and retain the offence?'

—'*Hamlet, Act 3, sec. 3.*"

I should like to know how far you think the cases referred to in the said note are like one now under the consideration of the Election Committee of our House of Commons, and what in that case, if the alleged offence should be found to have been committed, would be the effect of such finding as regards profits the offenders made by such offence.

Ottawa, 27th March, 1890. W.

[We publish with pleasure the foregoing letter from an old subscriber to this journal and an esteemed contributor to its columns. It was not written for publication, but we think it may be of interest to our readers. We spare no pains in making the JOURNAL useful and interesting to our patrons, and we are pleased that our number for March 17 is approved by so competent a critic and judge as our Ottawa correspondent, *laudatus a laudato*.—ED. C. L. J.]

DOMINION LEGISLATION OF THE SESSION OF 1890.

To the Editor of THE CANADA LAW JOURNAL :

SIR,— Allow me to congratulate the JOURNAL, its readers, and the country, on the close of what His Excellency calls "a somewhat protracted session," and on his being able to thank our representatives for the diligence with which they have applied themselves to their important duties, and his general approval of the 109 Acts they have passed. The speech and the list of Acts you have already in the official *Gazette*, and I hope in a day or two to send you the list with the Acts chaptered as they will be in the Statutes, and I trust you and your readers will find no reason to dissent from His Excellency's opinion of their value. The Bank Act would, in the opinion of many, have been improved by the omission of the provision making the several institutions *quasi* indorsers of each other's notes, in order that all may pass currently in every part of the Dominion ; to these dissenters it seems that it would have been better to make every bank have its agent for redeeming its notes in every Province, and letting them be current or not according to the standing of the bank in the estimation of the public. Everyone is pleased that the Government abandoned the idea of confiscating unclaimed dividends, and has adopted the English plan of giving public information respecting them. The amendments to the Criminal Law are undoubtedly improvements:—perhaps it would have been well if they had included some provision for the prevention and punishment of *boodling*, but Mr. Blake's promised Bill for better securing the independence of Parliament, with which that interesting offence has been shown to be closely

connected, will deal with it: and of this hereinafter. Of the martyred innocents it is unnecessary to speak, their merits and the loss the country sustains by their slaughter are recorded in our Canadian Hansard, in the eloquent words of their respective parents and if they deserved a better fate they will attain it in a future session, and emerge from the chrysalis state of Bills into the perfect state of Acts. I regret the fate of one little one for the legalization of standard time, which we have been using throughout the Dominion for years with great convenience, but illegally opening and closing polls, offices, banks, and sittings of legislatures, at Quebec, Montreal, Toronto, and all places in the Provinces of Quebec and Ontario by *l'Orignal time*, varying in many places from half an hour to nearly an hour from the solar time required by law. This Bill was brought into the Senate by Mr. MacInness, on the suggestion of Mr. Fleming, who had distinguished himself at the Washington conference in 1884, for establishing a prime meridian for the reckoning of longitude, and of time as depending on it, and which agreed upon that of the observatory at Greenwich. But Mr. MacInnes moved too late in the session, and we are to go on illegally for another year before we follow the example set us by the Imperial Parliament in 1880, by the Act 43–44 Vict., c. 9, doing for England and Ireland what Mr. MacInnes wants us to do for Canada. It seems now, that something may be done by Congress for the United States, which has hitherto been prevented by a supposed difficulty as to State and Congress jurisdiction. If Congress takes the matter up we may perhaps follow; I would rather we had led.

Our session was stormy as well as long, the "Outs" accusing the "Ins" of all sorts of wickedness, legislative and otherwise, and the "Ins" retorting, as of old, "*tu quoque*"; each calling the other very ugly names, and receiving the same answer, "you're another," supposed to be a quite sufficient and unan-

swerable reply. But we had, as you know, two first-class scandals, of which General Middleton and Mr. Rykert were the central figures. In the General's case everyone grieves that a man so much respected and liked, and to whom our country is indebted, and has acknowledged its indebtedness, for most excellent service in the North-West, did not, when convinced of his mistake in declaring certain furs *confiscated*, and acting as if he were the *Fisc* and had a right to divide them between himself and his friends, say at once, as we are told and are willing to believe he has since done, that he was ready to pay the sum which the commitee had reported as the value of the furs and recommended that Bremner should be paid for them. In spite of Mr. Blake's clear exposition of the rules of the British service, I cannot believe that the General knowingly intended to do wrong. Mr. Rykert's case admits of no excuse. Elected as a member of that branch of Parliament especially entrusted with the care of the property and pecuniary interests of the people, and paid for his services as such, he, by means which a select commitee of his fellow-members has formally declared to be "discreditable, corrupt and scandalous," and by misusing the faith which from his position members of the Ministry and public officers under them placed in him, is reported to have obtained from the Government for $500 a grant of timber limits which is said to have produced $200,000 to him or the party for whom he obtained them, and from whom he says he received 3,000 for thirty days during which he was using the means aforesaid for procuring them. Mr. Rykert, having resigned as a member of the Commons, is appealing to his former constituents for re-election; but would the House, after declaring his conduct to be discreditable, corrupt and scandalous, allow him to sit as one of its members, remembering the old adage as to similarity of plumage? Mr. Macdougall defended him very cleverly, but the defence was only a demurrer to the jurisdiction

of the House, not a plea to the merits or an assertion of the morality of his client's conduct. And if the Attorney-General (Sir John Thompson) had, as some assert, previously prepared or agreed to a report favourable to Mr. Rykert, it must have been of the same nature as M. Macdougall's defence, and not an approval of what Mr. R. did. As to the question whether an offender can lawfully retain effects obtained by his offence, and whether the law affords means of compelling him to give them up, the answer on moral grounds is pretty clearly given in one of your late numbers, by Hamlet's uncle, that he cannot lawfully retain them; and the said uncle says further:—

> "In the corrupted currents of this world,
> Offence's gilded hand may shove by justice;
> And oft 'tis seen the wicked prize itself
> Buys out the law. But 'tis not so above—
> There is no shuffing there."

In the case before us is there no way of obtaining the rescission of the grant by which $200,000 worth of property are said to have been obtained for $500? Is there no mistake as to the property, no concealment of knowledge of its value by the grantee, no *fraud* which vitiates everything? The Roman law held lesion to the extent of half the value to be sufficient, and though our modern law, founded more on trading principles, does not go so far, I think it still says that very gross inadequacy may afford evidence of the existence of fraud. Is $200,000 obtained in the manner reported by the committee for $500 sufficiently gross inadequacy? If English law affords no remedy in such a case, or it exists and our lawyers cannot find it, so much the worse for the law and lawyers, and Mr. Blake's purifying Bill is the more urgently necessary. I think if a like case had been referred by Hamlet's father to his Lord Chancellor, or whoever might there be the proper authority, and he had reported no remedy, King Hamlet would have thought and said there was

"something rotten in the State of Denmark," which must and should be cured.

W.

June 1890.

CURIOSITIES OF MEASUREMENT.

In our last number we inserted a very interesting engraving of the Eiffel Tower, now being erected at Paris as one of the attractions of the great exhibition to be held there in 1889, the highest building in the world, the Washington monument at Washington coming next. We also added on the plate the heights of some of the other lofty structures for comparison, which may be carried a little further by comparing the tower with some of nature's structures, the mountains of the world. This would show the height of the tower to be one-eighth of that of Mount Washington (8,000 feet); about one-fifteenth of that of some of the highest Alps and one twenty-ninth of that of the highest Himalayas; so that nature beats Mr. Eiffel very considerably, wonderful as his work will be. But a comparison of the mountains with the size of the earth itself throws them into the shade, and shows what small excrescences they are on this great globe we inhabit. We see by the papers that the Paris exhibition is to contain something that will facilitate this latter comparison. They say there is to be a terrestrial globe of thirty metres in diameter, about 100 feet, and we suppose that on this the mountains will be shown in relief, and on a scale which will serve for comparison with each other, but will probably be much larger than the scale of the diameter, just as an engineer shows the true elevations and depressions of a line of railway on a larger scale than the horizontal distances. Some years ago there was

exhibited, in London, a globe of 60 feet diameter, but turned inside out, the spectators being inside it, and the countries, seas and other geographical divisions being shown on the inside, elevations and depressions included, the latter being shown on a greatly enlarged scale, but, even then, being very small indeed, as compared with the size of the globe. The comparison was very interesting and instructive. We cannot all see either the said Paris or London globe; let us try whether we can use a globe of no very formidable size, and yet get some idea of the comparison which we have mentioned. Suppose we have one of forty inches diameter (thirty-six inches is not uncommon but forty will work more easily into our computation), then, taking the diameter of the earth at eight thousand miles, each inch of our globe will represent two hundred miles, and one mile will be represented by the two hundredth part of an inch. Now, to get a tangible exhibition of this small quantity, let us take any printed book of which the edges of four hundred pages, when the book is close shut, will make one inch in thickness; that of each leaf (two pages) will then be the two hundredth of an inch, and a scrap of such paper as the leaf is made of, pasted on the globe, will represent a mountain one mile high (5280 feet), or two-thirds of the height of Mount Washington, or more than five times that of the Eiffel tower; and less than six thicknesses of such paper will represent that of the highest mountain in the world, and not far from the greatest depth of the ocean, which is now considered to be rather more than the height of the loftiest mountain. We shall thus have a fair idea of the comparatively small elevations and depressions in the earth's surface, and of the very slight increase in them respectively, which would drown whole continents, or leave the bottom of the ocean bare; and we shall have some idea of the comparative size of man and that of the world he inhabits, for a thickness of our supposed paper will represent more than eight hundred times his average

stature; and yet man's stature and power are admirably adapted to the world he has to live in, and neither giants nor pigmies would be so well suited to it as he is.

W.

Dominion Illustrated.

COSMIC FORCES.

In our number before the last we presented our readers with an engraving of the Eiffel Tower, the loftiest building in the world, and in our last number, as a sequel, we gave them some "Curiosities of Measurement,' in which we compared the tower with some of Nature's works in this world of ours. But what are the greatest of these compared with God's works outside of this world? The sun and his attendant planets, and the stars, infinite in number, each a sun accompanied, astronomers tell us, by its attendant planets; and an infinity of space beyond them again, with stars whose light has not yet reached this world. Those of them which we can see are made visible by their light, which also, by the aid of that wonderful instrument the spectroscope, has shown us that many of the elements of which they are constituted are the same or similar to those found on our earth, and thus revealed the unity of creation. Yet that very light, by which we see these at night, makes them invisible by day, and if the sun shone always upon us, we should know nothing of these other worlds and suns. Our readers, or many of them, must be acquainted with Blanco White's beautiful sonnet founded on the facts we have mentioned, but many have probable never seen it. It will bear repetition, and we reproduce it. It has been called the finest, and is certainly among the finest, sonnets in our language,

Mysterious Night! when our first father knew
Thee, by report divine. and heard thy name,
Did he not tremble for this lovely frame—
This glorious canopy of light and blue?
Yet 'neath a curtain of translucent dew,
Bathed in the rays of the great setting flame,
Hesperus, with the Host of Heaven, came,
And lo! Creation widened in man's view.—
Who could have thought such darkness lay concealed
Within thy beams, O Sun? or who could find,
While flower and leaf and insect stood revealed,
That to such countless orbs thou mad'st us blind?—
Why do we then shun Death with anxious strife?—
If Light can thus deceive us, why not Life?

Dominion Illustrated. W.

ROBERT BROWNING.

To the Editor of THE DOMINION ILLUSTRATED:

SIR,—On a hint some time ago from your excellent and kindly contributor, Lockhart, that he was contemplating a Canadian symposium on Browning, I sent him the lines I subjoin, and was rather disappointed at finding from the extract in your now last number, from the "*Transcript Monthly*, of *Portland*," that the editor had not found room for them, as I hope *you* will. My praise seems reasonably strong—Mr, Roberts, I see, gently comments on our poet's love of the obscure—and the clear and loving spirit of Mr. Lockhart's own verse leads me to believe that he would not object to a little more light and love, and will

not be angry with me that I incline to agree with Mr. Duvar, in preferring the wife to the husband *as a poet*; I say nothing as to his psychological analysis or just and keen satire, or the theosophy of "*Caliban on Setebos.*"

Since you ask me, gentle Lockhart,
Leader of the band of minstrels
In the songs of our Dominion,
What I think of Robert Browning--
Take my thoughts for your symposium.
What he wrote, and what he taught
Is bright with wit, with wisdom fraught,
Large and lofty, strong and pure.
His pregnant verse at times obscure,
But still with some deep thought behind it—
So deep that many fail to find it.
Old proverbs say, that of the dead
Nothing but good should e'er be said;
Yet, I should better like our bard
If his hard things were not so hard.
Is there not something of the sphinx
In Caliban's mysterious "Thinks"?
Something not Hebrew, Greek or Asian,
And not exactly Athanasian?
Some hidden thing we long to see
In that deep, mystical "So he"?
Must we not Browning's spirit call
To lift the veil, and, once for all,
These riddles to explain and solve
With all the mysteries they involve,
And thus from all reproach our honoured bard absolve?

Ottawa, 1890 W.

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